

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CIVIL ACTION NO. 5:22-CV-00051-KDB-DCK**

YUBE T. HOLDER JR.,

Plaintiff,

v.

**MORRISON MANAGEMENT
SPECIALISTS, INC. AND
DAVIS REGIONAL MEDICAL
CENTER,**

Defendants.

ORDER

THIS MATTER is before the Court on Defendants’ Motions to Dismiss for improper and untimely service (Doc. Nos. 4, 23) and Plaintiff’s Motion for Extension of Time to Effectuate Service (Doc. No. 16). The Court has carefully considered these motions and the parties’ briefs and exhibits. While the Court certainly does not condone Plaintiff’s lack of diligence and ineffective initial efforts at service, Defendants actually received a copy of the Summons and Complaint within the prescribed period for service and proper service has apparently now been effected. *See* Doc. Nos. 3, 18.

Accordingly, the Court will, even in the absence of good cause shown, exercise its discretion to extend the time for the service of process so that this matter may be decided on the merits rather than a procedural deficiency. *See Gelin v. Shuman*, 35 F.4th 212, 219–20 (4th Cir. 2022) (“[U]nder [Fed. R. Civ. P.] Rule 4(m), a district court possesses discretion to grant the plaintiff an extension of time to serve a defendant with the complaint and summons even absent a showing of good cause by the plaintiff for failing to serve the defendant during the 90-day period

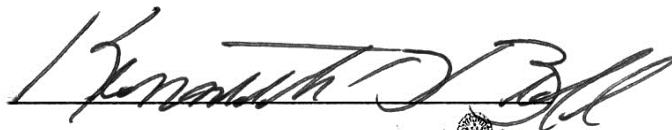
provided by the Rule.”); *Harris*, 2015 WL 1893839, at *5 (W.D.N.C. Apr. 27, 2015) (citing *Choice Hotels Int'l, Inc. v. Goodwin & Boone*, 11 F.3d 469, 472 (4th Cir. 1993)) (“Federal courts are here to resolve cases on the merits, to avoid procedural defaults whenever possible, and to issue the sanction of dismissal only in extreme cases of plaintiff misconduct.”). With the permitted extension of the time for Plaintiff to effect service, Defendants’ motions to dismiss for insufficient or untimely service necessarily fail.

NOW THEREFORE IT IS ORDERED THAT:

1. Defendants’ Motions to Dismiss (Doc. Nos. 4, 23) are **DENIED**;
2. Plaintiff’s Motion for Extension of Time to Effectuate Service is **GRANTED**, with the date of required service extended to October 10, 2022; and
3. This case shall proceed towards a ruling on the merits of Plaintiff’s claims in the absence of a voluntary resolution of the dispute among the parties.

SO ORDERED ADJUDGED AND DECREED.

Signed: September 30,



Kenneth D. Bell
United States District Judge

